

California Regional Water Quality Control Board  
Santa Ana Region

August 25, 2006

**ITEM: 8**

**SUBJECT:** Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Timothy and Dorothy Dunlap, 11585 Ponderosa Drive, Fontana, San Bernardino County, APN 0236-261-01

**DISCUSSION:**

As discussed at the Board's July 14, 2006 meeting, Timothy Dunlap contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. & Mrs. Dunlap own and reside in a house located on a 0.78-acre lot at 11585 Ponderosa Drive, Fontana. This area of San Bernardino County is unsewered. The existing house is currently connected to an existing septic tank-subsurface disposal system. Mr. & Mrs. Dunlap propose to convert an existing barn into a second dwelling unit (granny flat) to provide a residence for their mother, who is in need of their assistance. A second septic system is proposed to serve this second dwelling unit.

Because the Dunlap's proposal did not satisfy the Board's minimum lot size requirements for septic tank-subsurface disposal system use, Board staff denied the request for use of the second septic system. The Board considered an appeal of staff's denial at the July 14, 2006 meeting. The Board upheld staff's denial but recommended that the Dunlaps pursue one of two alternatives that would allow their project to proceed. The first alternative is to enter into an Agreement of Restriction, whereby the Dunlaps would commit to the removal of the fixture units in the second dwelling unit and the removal of the second septic tank system from service once its use was no longer required by the Dunlap family, or whenever the property was sold, whichever occurred first. The second alternative is to implement an approved offset, i.e., connect to the sewer another property that would not otherwise be required to connect. Because the offset option is identified in the Board's minimum lot size exemption criteria, Board staff could approve the proposal based on an offset commitment. The first option, the Agreement of Restriction, is not included in the exemption criteria and requires Board approval.

While Mr. Dunlap indicated concern with the Agreement of Restriction at the July 14, 2006 Board meeting, he and his wife have since agreed to utilize this approach. Specifically, they have offered to remove the fixture units in the second residence and to remove the second septic system from service once the second residence is no longer required for their mother's use. Mr. & Mrs. Dunlap also agreed to enter into an Agreement of Restriction to be recorded with the property Chain of Title that stipulates that their property may not be sold until the fixture units in the second dwelling are removed and the second septic system has been demolished or removed from service.

To date, Mr. & Mrs. Dunlap have not been successful in identifying a suitable and affordable offset. They have agreed to sewer their property once a sewer line is available. Sewering their property or implementation of an acceptable offset would obviate the need for the Agreement of Restriction, which could then be removed from the Chain of Title.

**RECOMMENDATION:**

Approve Mr. & Mrs. Dunlap's request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157, with the following conditions: 1) Once the second home is no longer required for use by the Dunlap family, the fixture units will be removed from the second home and the second septic system will be demolished or removed from service by filling the tank with sand after proper removal and disposal of septage; 2) Mr. & Mrs. Dunlap must enter into an Agreement of Restriction, which shall become a part of the Chain of Title, that the fixture units in the second home must be removed and the second septic system must be demolished or properly abandoned prior to sale of the property; and, 3) Mr. & Mrs. Dunlap shall connect their property to the sewer within one year of availability of sewer. If Mr. & Mrs. Dunlap locate and implement an acceptable offset or connect their property to the sewer, the Agreement of Restriction may be removed, allowing the continued use of the second home on their property.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel  
San Bernardino County Environmental Health Services – Corwin Porter  
San Bernardino County Building and Safety – Barbara Johnston  
City of Fontana – Richard Brooks/Steve Lopez